

WAIVER OF PENALTY POLICY

A request for waiver of a penalty requires an evaluation of the facts presented in writing by the employer. For the Department to waive the penalty, the employer must establish that good cause or reasonable cause exists, based on the facts involved in the actual case. Good cause or reasonable cause are issues when an employer fails to comply in a timely manner with certain requirements of the California Unemployment Insurance Code (CUIC) or the California Code of Regulations, Title 22.

Provisions for waiver of penalty for good cause are in CUIC Sections 803, 991, 1088.5, 1088.8, 1111, 1112, 1112.5, 1114, 1116, 1117, and 10357. Provisions for waiver of penalty for reasonable cause are in CUIC Section 13052. Good cause and reasonable cause have been interpreted by the California Unemployment Insurance Appeals Board (CUIAB) to have virtually the same meaning.

Penalties charged under CUIC Sections 1126, 1135, 13052.5, or any other CUIC section that does not specifically indicate provisions for waiver of penalty, cannot be waived.

Waiver of Penalty

A waiver of penalty request will not be considered until the employer submits a written request that explains why good cause exists and the reason(s) for his or her untimeliness.

Existence of Good Cause

For good cause to exist, there must be unusual circumstances which could not be reasonably foreseen. Employers are expected to discharge their basic employer responsibilities and therefore must establish all of the following:

1. They acted in good faith.
2. They acted in a diligent, timely, and prudent manner.
3. The circumstances could not have been reasonably foreseen.

Good cause exists where the circumstances causing the delay are clearly beyond the control of the employer or where the delay is due to a mistake or inadvertence under

circumstances not reasonably foreseeable by the employer. In other words, the delay is not attributable to the employer's fault.

A good cause determination must always take into account the total time period taken by the employer or his/her representative to comply with the Department's requirements.

Precedent Tax Decisions

The Department is required to follow the guidelines set forth in precedent tax decisions issued by the CUIAB when determining whether good cause exists.

According to Precedent Tax Decision P-T-23, good cause must be more than a mere excuse. It must be a substantial reason which affords a legal excuse. Each situation must be carefully analyzed to determine whether the employer appeared to have acted in good faith and in the same diligent manner that a prudent businessperson would have acted under similar circumstances (28 Am. Jr. 643).

Precedent Tax Decision P-T-449 addressed good cause in the case of a delayed remittance. In the decision, the CUIAB stated that the employer had established a system for filing returns/reports and remittances that it had reason to believe was adequate and the belief was grounded in prior experience and not mere speculation. Therefore, an isolated instance of inadvertence not reasonably foreseeable by the employer constitutes a substantial reason which affords a legal excuse. In this case, the prior history of the petitioner was considered, showing strong evidence that the petitioner had reason to believe its system was adequate.

In addition, the CUIAB stated in P-T-449 that when an employer is aware that its procedures for reporting and paying its tax obligations are inadequate and that employer does not meet the time limits for filing the proper forms or making the proper payments to the Department, it will be at fault and will not have good cause for the delay.

NOTE: Unforeseen financial hardship is not grounds for good cause. In Precedent Tax Decision P-T-449, the CUIAB stipulated that "lack of funds to pay the amount owing on a return does not constitute good cause."

Examples Where Good Cause Does Exist

The employer's return and remittance for California was inadvertently placed in the wrong envelope and mailed timely to the Commonwealth of Virginia. The CUIAB determined the employer's late filing was due to an isolated instance of inadvertence not reasonably foreseeable by the petitioner and not attributable to any fault of the petitioner (P-T-449).

An employer failed to affix proper postage to an envelope with a timely remittance enclosed. The CUIAB determined the employer made a good faith effort to file on time and believed it had done so. All other payments and filings were made timely to the Department, and this was an exception to that practice. In this case, good cause existed (T-85-9).

Good cause existed where the employer, under the distress of the sudden illness of the employer's father, was unable to file and pay the contributions due timely (T-78-149).

Catastrophic occurrences such as fire or earthquake or delays attributable to the postal service would clearly give the employer good cause. (P-T-449). The catastrophic occurrences would be subject to when the calamity actually took place in relation to the time when the taxes were due.

Examples Where Good Cause Does Not Exist

The CUIAB held that an employer's reliance upon another to perform acts does not constitute good cause since he or she may not complain of his or her voluntary delegation of authority and, as principal, is bound by the action or inaction of his or her agent (TD-771).

The employer contracted with an accountant to handle its tax obligations. The accountant failed to file reports while assuring the employer that all deadlines were being met. The employer had a duty to select a responsible accountant but did not do so. The employer also failed to specify what assurances were given by the accountant. Therefore, the employer failed to establish it acted with the degree of diligence a person of ordinary prudence would have used under the same or similar circumstance (T-85-173). In this case, good cause did not exist.

An employer's public accountant prepared the return, but no one was available to draw the check. The accountant mailed the employer's return unaccompanied by payment. The CUIAB found the cause for failure to be the accountant's lack of knowledge of the law coupled with the employer's failure to have a responsible agent with the authority to draw checks on its behalf to properly discharge its responsibility to make contributions. Good cause did not exist because there was no element beyond the control of the employer (TD-1177).

The mere fact that one partner may have been defrauded does not constitute good cause for the partnership not filing and paying returns in a timely manner (T-86-104).

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